

IN THE MATTER OF : BEFORE THE  
  
**JOSEPH & MARY SCHUSTER** : HOWARD COUNTY  
  
 : BOARD OF APPEALS  
  
Petitioners : HEARING EXAMINER  
  
 : BA Case No. 06-030V

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**DECISION AND ORDER**

On October 24, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Joseph and Mary Schuster, Petitioners, for a variance to reduce the 10-foot side setback to 5 feet for a porch addition to be located in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Mary Schuster and Potor Sorge testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8690 Flowering Cherry Lane, is located in the 6<sup>th</sup> Election District on the west side of Flowering Cherry Lane about 30 feet north of Harding Road in the Harding Woods subdivision in Laurel (the “Property”). The Property is identified on Tax Map

46, Block 16 as Parcel 65, Lot 1.

The Property is a trapezoidal-shaped lot consisting of about 17,131 square feet. The lot has about 64.36 feet of frontage on Flowering Cherry Lane and widens to about 105.15 feet at the rear lot line. The Property is about 201.46 feet deep.

The Property is improved with a two-story residential dwelling that faces Flowering Cherry Lane and is located 68 feet from the road frontage, 11 feet from the north side lot line, 84 feet from the rear lot line, and 14 feet from the south side lot line at the front of the house and 22 feet from the south lot line at the rear of the house. The house is about 35 feet deep and 60 feet wide.

The house is accessed from a paved driveway from Flowering Cherry Lane leading to a two-car attached garage at the north side of the house. The back yard of the lot slopes down to the west to a stand of mature pine and deciduous trees.

2. The Petitioners, the owners of the Property, request a variance for a porch addition to be constructed onto the south side of the home. The addition will consist of a covered with an outdoor fireplace and a basement addition underneath with material s to match the existing house. The porch addition will be 12 feet wide and 34 feet deep. The southeast corner of the porch addition will therefore be located 5 feet from the south side lot line and encroach 5 feet into the 10-foot side setback required by Section 108.D.4.c(1)(b).

3. Vicinal properties are also zoned R-20 and are part of the Harding Woods subdivision. The subdivision plat identified by the Petitioners (Exhibit 1) indicates that the Property is narrower than all but one other property in the subdivision. The size of the Petitioner's home is

typical of many in the neighborhood. The lot to the south of the Property is an open space lot.

4. Mrs. Schuster testified that many other homes in the area have similar porch additions.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of

the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is narrower than most other properties in the neighborhood. With the porch addition, the home will remain of relatively modest size. In order to construct the addition, however, due to the narrowness of the buildable area of the lot, it is necessary to encroach slightly into the side setback. Consequently, I find that the narrowness of the Property are unique physical conditions that cause the Petitioners practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The addition will be used for permitted residential purposes and will not change the nature or intensity of the use. The lot to the east of the Property is an open space lot and the porch addition will be well separated and buffered from public road right-of-way. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be

detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the narrowness of the Property and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed 12' by 34' porch addition is the minimum width feasible and will be located in the only area practical due to the size and shape of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **20<sup>th</sup> day of November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Joseph and Mary Schuster for a variance to reduce the 10-foot side setback to 5 feet for a porch addition to be located in an R-20 (Residential – Single) Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.